

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN G. PEDICINI,

Plaintiff,

-VS-

UNITED STATES OF AMERICA
ET AL.,

Defendants.

CIVIL ACTION NO. 04-12395-JLT

FILED
IN CLERKS OFFICE
2007 JUL 30 P 12:43
U.S. DISTRICT COURT
DISTRICT OF MASS.

PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE DEFENDANTS'
EXHIBITS

Plaintiff calls the Court's attention to the fact that Defendants are attempting to add new documents to this case at the 11th hour, long after discovery ended on January 31, 2006. Defendants' exhibits #9,10,12,13,17,19¹,20, 21, 22, 23, 24, 25, 26 are all new documents, without Bates-Stamp Numbers, and should be exclude as causing unfair prejudice to the Plaintiff, as well as presenting substantial danger to confuse the issues and mislead the jury. Plaintiff, John G. Pedicini, hereby moves this Court in limine to exclude, or in the alternative to limit, the

¹ The date of this document is 7/20/2001. If this is a typographical error and the date should be 9/20/01, then this is not a new document and Plaintiff does not object to it.

admissibility of the following exhibits that Defendants intend to offer at trial²:

- (1) Position Description of John Pedicini, Financial Management Specialist (US0176-US0184): This document should be excluded as irrelevant. The Position Description is generic and is the same for all employees. It does not list the specific duties on which Plaintiff is evaluated for his job performance and job responsibilities.
- (2) Position Description of Martin Hines, Budget Analyst (US0164-US0167)

This document should be excluded as irrelevant. The Position Description is generic and is the same for all employees. It does not list the specific duties on which Mr. Hines is evaluated for his job performance and job responsibilities.

- (3) Memorandum from USDA to Regional Administrators, dated February 22, 1982 (Bates-Stamp Forthcoming): This document is completely and unequivocally irrelevant to this case, attached hereto as Exhibit A. It deals with certifying disbursements (i.e. expenditures) whereas this case deals with certifying funds availability. Funds control officers do not certify cash disbursements as stated in the Agency's own regulations, FNS Handbook 101, p. 3-3, Section C(3), attached hereto as Exhibit B. This document should be excluded as inadmissible hearsay and irrelevant.
- (4) Delegation of Authority Memorandum (Bates-Stamped US0015): This is a self serving document in which Douglas MacAllister attempts to appoint himself as a certifying officer (See letter attached hereto as Exhibit C). Defendants' own witness, Frances Zorn has

² Numbers correspond to Exhibit numbers of Defendants' Amended Rule 26 Disclosures filed on 7/26/2007.

testified that she never re-delegated the authority to MacAllister in order to execute such an agreement (See Zorn Deposition, pp. 199-202, attached hereto as Exhibit D). This document should be excluded as inadmissible hearsay and irrelevant.

(9) Performance Appraisal for John Pedicini, dated 2/16/2007 (Bates-Stamp Number forthcoming):

This is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

(10) FNS Integrated Program Accounting System Report on User Access, dated 7/19/2007 (Bates-Stamp Number forthcoming):

This document does not list titles or duties in the computer system, as such it presents substantial danger of misleading the jury. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, the Court should exclude it.

(11) Financial Management Northeast Region Org. Chart for period 9/2002-8/2003 (US0056):

This document should be excluded as irrelevant. The org. chart does not list individual job duties and responsibilities, as such it presents substantial danger of confusing the issues and misleading the jury.

- (12) Financial Management Official Org. Chart, Dated 12/1/2004 (Bates-Stamp Number forthcoming):

This document should be excluded as irrelevant. The org. chart does not list individual job duties and responsibilities, as such it presents substantial danger of confusing the issues and misleading the jury. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (13) Financial Management Org. Chart for period 2/2006-5/2007 (Bates-Stamp Number forthcoming):

This document should be excluded as irrelevant. The org. chart does not list individual job duties and responsibilities, as such it presents substantial danger of confusing the issues and misleading the jury. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (17) FNS-NERO FY05 & FY06 Cash Awards issued to John Pedicini (Bates-Stamp Numbers forthcoming):

Cash awards are not an issue in this case, pursuant to Summary Judgement Memorandum from Judge Tauro, dated 3/29/2007, pp. 22-23. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (19) FNS Computer System Access Request for John Pedicini, dated 7/20/2001 (Bates-Stamp forthcoming):³

This is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (20) SERO Financial Management Organization Chart Dated June 2006 (Bates-Stamp forthcoming):

This document should be excluded as irrelevant. The org. chart does not list individual job duties and responsibilities, as such it presents substantial danger of confusing the issues and misleading the jury. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the

³ If the date of this document should be 9/20/2001, then Plaintiff does not object to it.

issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

**(21) Learning History Record of John Pedicini
(Bates-Stamp forthcoming):**

The "learning history record" is deceptive. These courses are required courses for all employees, irrespective of job duties, as such the "learning history record" should be excluded. It deals with basic instruction in ethics and awareness of computer security. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

**(22) Memo to Michael Todd, Funds Officer at FNS
Mountain Plains Region, regarding Formal
Delegation of Authority (Bates-Stamp Number
Forthcoming):**

This document should be excluded as irrelevant and confusing. It does not mention anything about backup funds officers. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

**(23) Delegation of Authority With Respect to
Availability of Administrative Funds Form,
Regional Administrator of FNS Southeast Region**

Donald E. Arnette (Bates-Stamp Number forthcoming):

This document should be excluded as irrelevant and confusing. It does not mention anything about backup funds officers. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (24) Delegation of Authority With Respect to Availability of Administrative Funds Form, Regional Administrator of FNS Southeast Region Retha F. Oliver (Bates-Stamp Number forthcoming):**

This document should be excluded as irrelevant and confusing. It does not mention anything about backup funds officers. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (25) Delegation of Authority With Respect to Availability of Administrative Funds Form, Regional Administrator of FNS Southeast Region Sara S. Harding (Bates-Stamp Number forthcoming):**

This document should be excluded as irrelevant and confusing. It does not mention anything about backup funds officers. In addition, this is a new document in the case. Defendants are

engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (26) **Delegation of Authority With Respect to Availability of Administrative Funds Form, Regional Administrator of FNS Southeast Region J. Lewis Wright (Bates-Stamp Number forthcoming):**

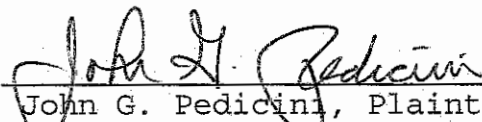
This document should be excluded as irrelevant and confusing. It does not mention anything about backup funds officers. In addition, this is a new document in the case. Defendants are engaging in discovery long after discovery has ended. Discovery in this case ended on January 31, 2006. Defendants are seeking to add new documents to case at the 11th hour. Given the unfair prejudice to the Plaintiff, confusion of the issues, and danger to mislead the jury that would result from adding this document, Court should exclude it.

- (28) **NERO Vacancy Announcements, posted 7/16/2003 & 11/03/2003 (P-2089-P-2093, P-2083-P-2088):**
This document should be excluded as irrelevant. No hiring decision was ever made from these vacancy announcements.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court exclude Defendants' above-named exhibits from the trial.

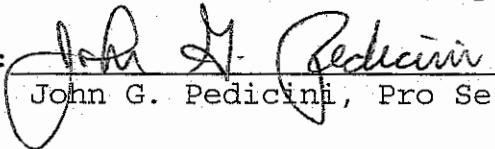
Respectfully submitted,


John G. Pedicini, Plaintiff Pro Se
10 Milano Drive
Saugus, MA 01906
781-248-1385

7/30/07
Date

CERTIFICATION OF SERVICE

Pursuant to L.R.5.2(b), I hereby certify that a true copy of the above document was served on the Defendants on July 30, 2007, via U.S. Government email system to: Gina Walcott-Torres, Assistant U.S. Attorney, Moakley Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210.

By: 
John G. Pedicini, Pro Se

7/30/07
Date

EXHIBIT A

Original to FNI

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE**

WASHINGTON, DC 20250

REPLY TO
ATTN OF:

FEB 22 1982

SUBJECT: Authority to Designate Certifying Officers

TO: Regional Administrators

THRU: Andrew P. Hornsby, Jr.
Deputy Administrator
for Regional Operations



This memorandum outlines the steps necessary to establish authority to designate certifying officers in the Regional Offices.

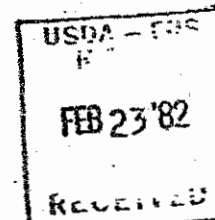
When FNS Regional Offices assume responsibility for disbursing activities, each Region will need to file with Treasury the specimen signature of the manager authorized to designate certifying officers. These specimen signatures must be authenticated by someone whose signature is already known to Treasury. In our Agency, that person is the Director of Accounting and Reporting Division (AC).

Please complete the delegation statement attached to this memorandum, have the named person sign it, and return it to AC. The Director of AC will authenticate the Regional Manager's signature and forward the form to Treasury. Thereafter the RO will be able to add or change certifying officers without Headquarters involvement.

As soon as we hear from Treasury that Agency Location Codes and servicing disbursing centers have been assigned, we will send each RO a supply of SF-210 Signature Cards for Certifying Officers, with instructions for using them. Each Region must have a primary and at least one alternate certifying officer. The position is a very responsible one, as is clear from the following excerpt from 31 USC 82c:

"The officer or employee certifying a voucher shall (1) be held responsible for the existence and correctness of facts recited in the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved; and (2) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved..."

You will want to keep these requirements in mind when making personnel designations.



Regional Administrators

2

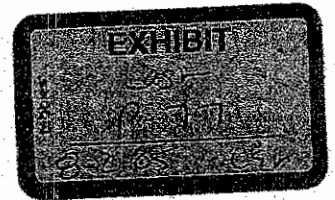
If you have any questions, do not hesitate to call me. For practical advice based on experience with the certifying function, you may wish to call Dave Hamer, Director of AC, who is also a member of the Decentralization Task Force. His telephone number is 447-6990.

Raymond A. Pugh, Sr.
RAYMOND A. PUGH, SR.
Deputy Administrator
for Financial Management

Attachment

EXHIBIT B

FNS HANDBOOK 101



FNS HANDBOOK 101

Published on December 9, 2002

First Edition

P-3162

FNS HANDBOOK 101

commitment document's reference information, and process the obligation to an accepted status.

(See Handbook 101, Chapter 3, section 303; Handbook 101 Chapters 5-11, Funds Officer Responsibility sections, and FNS FFIS Desktop Procedures).

7. **Report Monthly Status of Funds** – See Chapter 4 of the Handbook and any additional guidance produced by the Budget Division.
8. **Prepare Year-end Estimates** – All estimates associated with feeder system activity will be generated by the feeders and recorded automatically using standard voucher documents. Year-end estimates will be directly entered into FFIS using a Standard Voucher (YE) document. For year-end estimates, a Trans Type of DE, is used for Delivered orders, and UN for Undelivered orders. Because end-of-year period-end estimate requirements are unique to a given fiscal year, Budget Division will issue detailed instructions on any changes in procedures each fiscal year. (See Yearly Administrative Funds Control Guidance produced by Budget Division).
9. **Perform Closeout Activities** – Funds officers should ensure that all unprocessed obligations are submitted as period-end estimates at the end of the fiscal year by converting all commitment documents to obligation documents. In addition, funds officers shall review unliquidated obligations to determine those obligations that can be deobligated. Budget Division will monitor prior year obligations beginning with the January reports. (See yearly guidance produced by Budget Division).

B Objectives of Funds Control.

- 1 To ensure that funds are used only for the purposes authorized by law.
- 2 To ensure that funds are used efficiently and economically.
- 3 To ensure that obligations and disbursements do not exceed the amounts authorized.
- 4 To ensure that the expenditure of authorized funds is not reserved or otherwise deferred without Congressional knowledge and approval.

C Funds Control Policies.

- 1 The total amount obligated must be funded from one or more specific allowances.
- 2 The total amount of allowances issued must not exceed the available allotment which, in turn, must not exceed the available apportionment and appropriation.
- 3 Allowance holders may not authorize obligations in excess of their allowance. If an allowance holder has more than one allowance, each allowance must be controlled separately. Funds control officers do not authorize the expenditure of funds. They certify the availability of funds only.
- 4 Disbursements shall be made only if an authorized obligation has been established and only if the goods or services ordered have been received.

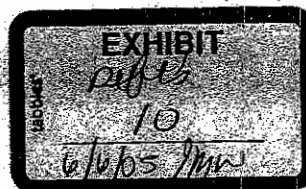
EXHIBIT C

JAN-06-2005 16:04

FNS NERO RA

617 565 6473

P.04/09



**United States
Department of
Agriculture**

Food and
Nutrition
Service

Northeast Region

10 Causeway St.
Room 501
Boston, MA 02222

FSP/IF-FM

May 28, 2002

SUBJECT: FPA Certifying Officer

TO: Memorandum for the Record

This memorandum reaffirms and extends Marty Hines duties as Certifying Officer for NERO's management control of FPA funds.

Marty has served effectively in this capacity for many years.

When Marty is absent, either Joseph Stanco or I will serve as alternate Certifying Officer.

Douglas A. MacAllister
Douglas A. MacAllister
Director, Financial Management
FNS, Northeast Region

US0015

EXHIBIT D

UNITED STATES DISTRICT COURT-
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, and
ANN M. VENEMAN, SECRETARY,
UNITED STATE DEPARTMENT OF
AGRICULTURE,
Defendants.

DORIS O. WONG ASSOCIATES, INC.

1 authority, right?

2 A. Yes.

3 Q. And you identified a document, which is
4 Defendants' Exhibit 7, in which your predecessor,
5 Harold T. McLean, designated himself with this
6 authority, correct?

7 A. Yes.

8 Q. Did you ever delegate this authority to
9 yourself?

0 A. Me specifically? No. But I think this was
1 related to a new process -- this talks about a new
2 delegation pursuant to a functional reorganization.
3 So I don't believe I have to have -- I don't have to
4 delegate to myself the FNS instructions talking
5 about the regional administrators being able to
6 delegate these assignments.

Q. So it was your understanding that the
regional administrator would not have to delegate to
him or herself, but would have the power to delegate
to others?

A. Yes.

Q. Now, did you ever delegate to Douglas
MacAllister your delegation authority?

A. Not in so many words.

1 Q. So you never did that?

2 A. I never wrote him a letter saying that, no.

3 Q. So you never did anything to confer your
4 delegation authority upon anybody but yourself,
5 correct?

6 A. Yes.

7 Q. As far as you know, none of your
8 predecessors, including Mr. McLean, ever delegated
9 to Douglas MacAllister their delegating authority,
10 correct?

11 MR. WILMOT: Objection.

12 A. I don't know if they did or didn't.

13 Q. But you have no knowledge of any of your
14 predecessors providing Douglas MacAllister their
15 delegating authority, right?

16 MR. WILMOT: Objection.

17 A. I don't know or not know that.

18 Q. Well, do you have any document that shows
19 any of your predecessors delegating to Douglas
20 MacAllister their right to delegate fund
21 certification officers?

22 A. As far as I know, no.

23 Q. So as far as you know, Douglas
24 MacAllister's delegation of authority is

1 unauthorized, right?

2 MR. WILMOT: Objection.

3 A. Since he is the accountable entity for
4 financial management, he does hold a general
5 delegation of financial management responsibilities,
6 so I wouldn't call -- what was the word?

7 Q. "Unauthorized."

8 A. I wouldn't call it unauthorized, but I
9 wouldn't call it formally authorized, either.

10 Q. So at least his delegating of these
11 responsibilities is somewhat questionable, correct?

12 MR. WILMOT: Objection.

13 A. Questionable in what way?

14 Q. The authorization for him delegating
15 certifying rights is of a somewhat murky area?

16 MR. WILMOT: Objection.

17 A. There is not the clearest documented trail
18 of it, if that's what you mean.

19 Q. Okay, fine. Now, you show in Exhibit 9
20 that you personally delegated authority to Marty
21 Hines to approve individual trip-by-trip
22 authorizations for Type C.

23 A. Yes.

24 Q. Now, this was not general authority to

1 approve fund requests or certifying funds, correct?

2 This is just a very narrow authorization?

3 MR. WILMOT: Objection.

4 A. It's not the same as certifying funds, but
5 it is a delegation of a function that does in the
6 end obligate money.

7 Q. Okay. So this document does not delegate
8 authority to certify funds, correct?

9 A. No.

10 Q. It's a document that in your mind is
11 related to that function, but it is not that
12 function, right?

13 MR. WILMOT: Objection.

14 A. It's related to that function, yes.

15 Q. But it's not that function?

16 A. Not in its entirety.

17 Q. Is it in part that function?

18 A. In part, yes.

19 Q. But not in its entirety. So back in 1998,
20 you didn't find the need to provide written
21 authorization to Marty Hines of certifying funds
22 authority in its entirety?

23 A. You know, I don't know what exactly
24 precipitated that particular signature of mine. It